

**REMARKS**

By this Amendment, claims 41, 43, 44, and 46 are canceled without prejudice or disclaimer and claims 47-51 are newly added. Therefore, claims 11, 19-24, 39, 42, 45, and 47-51 are pending in the application.

Claims 42 and 45 are each amended to remove the word "large," and it is believed such change obviates the outstanding § 112, second paragraph, rejection.

Applicant thanks the Examiner for indicating that claims 1, 19-24, and 39 are allowed and that claims 42 and 45 contain patentable subject matter and would be allowable if appropriately rewritten. Since claims 42 and 45 are now rewritten to include their respective base claims and any intervening claims, claims 42 and 45 are allowable.

No new matter has been added.

Consideration and allowance of all claims is respectfully requested.

All previously-rejected claims have been canceled without prejudice or disclaimer. The following comments are provided to illustrate the patentability of newly-added claims 47-51.

- The claimed earth working scraper of independent claim 47 improves over conventional earth working scrapers by uniquely providing a combination that includes: a scraper pan structured for being lowered into or raised out of contact with a ground surface, the scraper pan having an earth-holding area formed as a bin and having a scraper blade, the bin having an essentially horizontal bottom surface and an opening in a wall thereof, the scraper blade being incorporated into the essentially horizontal bottom surface of the bin and being disposed adjacent the opening in the wall of the bin; an axle adapted for carrying the scraper pan; a rotatable axle wheel connected to the axle and having a plurality of spaced-apart drive members along a circumferential edge thereof; and a track having lugs formed along an inner surface thereof, the lugs being configured for meshing engagement with the drive members of the wheel.

As a result of the claimed structure as a whole, an improved earth scraper carrying a

tremendous amount of weight has a reduced bouncing and resultant rutting of a haul road, a reduced time of travel as a result of a higher speed of travel, a reduced amount of sliding due to an improvement in traction, a reduced risk of sinking of the earth scraper as a result of reducing the formation of grooves in the haul road, an improved scraping operation as a result of enabling the earth scraper to maintain a lower center of gravity, an improved earth scraping operation as a result of improved tensioning and shock absorbing characteristics of the earth scraper, and other advantages.

None of the cited references, alone or in combination, teaches or suggests the invention of independent claim 47 as a whole.

The *Clausen* reference discloses a power blade 10 having a track 16 and a bottom plate 26 directly beneath the track, the bottom plate 26 and track 16 operating to move a layer of earth from in front of the vehicle to a side of the vehicle (e.g., Title; Abstract; col. 3: lines 44-46; col. 4: lines 10-11; Fig. 1). The track 16 is best shown in Fig. 1 of *Clausen*, track 16 being protected from touching the ground by bottom plate 26. In operation, the *Clausen* device is used to move earth to the side of the vehicle (e.g., 2: 18-19). By comparison, a sideways-moving track 16 of *Clausen* does not teach or suggest the claimed scraper pan because it is completely different structurally from what is claimed and lacks several claimed structural limitations. Despite the Examiner's characterizations (e.g., October 21 Office action, at pp. 2-3), the *Clausen* device 10 pushes the earth away from the attachment 10 and does not have any structure for receiving scraped earth.

The *Wigoda* reference discloses a beach trash machine having a blade 24 at the back of vehicle 12 for grading the beach and removing the tire tracks left by tires 22 (e.g., 2: 45-49). The vehicle 12 has a front shovel 18 that may be raised over the cab of vehicle 12 so that the contents of the shovel may be emptied onto chute 16 for transfer into container 14 (e.g., 2: 38-41). By

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comparison, a front shovel 18 and a separate rear container 14 of *Wigoda* does not teach or suggest the claimed scraper pan because it is completely different structurally from what is claimed and lacks several claimed structural limitations.

Importantly, one of ordinary skill in the art would not have been motivated to have achieved the claimed structure when viewing the cited references and the combination of *Clausen* and *Wigoda* amounts to impermissible picking and choosing based on hindsight gleaned only from Applicant's disclosure.

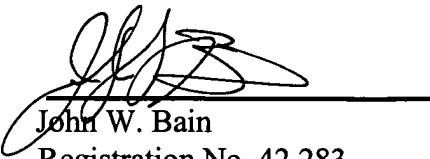
None of the other cited references teaches or suggests what is claimed.

#### **Request for Interview**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly **requested to call** the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 10-0270.

Respectfully submitted,



John W. Bain  
Registration No. 42,283

Jansson, Shupe, Munger & Antaramian, Ltd.  
245 Main Street  
Racine, WI 53403  
Telephone: (262) 632-6900  
Facsimile: (262) 632-2257

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